



VILLAGE OF BELCARRA
Highway Encroachment Marine/Senkler Area
Bylaw No. 411, 2008



A Bylaw to Impose Terms and Conditions on Encroachments in, on, or under Highways

WHEREAS the Community Charter provides that Council may by bylaw regulate uses of, or involving a highway, or portion of, or public place, and provide that except under the terms and conditions imposed by Council, a person shall not excavate in, cause a nuisance on, encumber, obstruct, injure, foul or damage any portion of a highway or other public place;

NOW THEREFORE the Village of Belcarra Municipal Council, in open meeting assembled enacts as follows:

1. This Bylaw may be cited for all purposes as "The Village of Belcarra Highway Encroachment Marine/Senkler Area Bylaw No. 411, 2008".
2. No person shall cause or permit all or part of a building, structure or other fixture on lands owned by that person to project on, over or under all or part of a highway and no person shall place or construct any building, structure or fixture on, over or under all or part of a highway, except in accordance with this bylaw.
3. The prohibitions in Section 2 do not apply to wharf/docks within the area outlined on Schedule "D" if an owner of a parcel in Schedule "D" agrees to be bound by all the terms of the Highway Encroachment Agreement annexed to this Bylaw as Schedule "A" and in evidence of such agreement duly executes Schedule "A", and delivers the same to the Village.
4. This bylaw does not apply to a highway designated as an arterial highway under Section 31(1) of the Highway Act.
5. The Mayor and Chief Administrative Officer are authorized to execute all agreements delivered pursuant to Section 3.
6. Any person who contravenes any provision of this bylaw commits an offence punishable upon summary conviction by a fine not exceeding \$2,000.00.
7. If a portion of this bylaw is held invalid by a Court of competent jurisdiction, then the invalid portion must be severed and the remainder of this bylaw is deemed to have been adopted without the severed section, subsection, paragraph, subparagraph, clause or phrase.

SCHEDULE "A"
HIGHWAY ENCROACHMENT AGREEMENT

THIS AGREEMENT dated the ____ day of _____, 20__, is

BETWEEN:

Village of Belcarra
4084 Bedwell Bay Road
Belcarra, British Columbia
V3H4P8

(herein called the "Village")

AND:

(herein called the "Licensee")

GIVEN THAT:

- A. The Licensee is the registered Owner(s) of land in the Village of Belcarra having an address of _____ (the "Lands") and legally described as:

Lot: _____, Block _____ Plan _____

Parcel Identifier:

- B. The Licensee has requested the Village grant permission for limited use of the Road Allowance adjacent to the lands;
- C. The Village agrees to grant the Licensee permission subject to the provisions of the Village bylaws, as amended from time to time and subject to the terms and conditions herein set forth;
- D. The Village may, by bylaw, regulate the use of highways and establish terms and conditions for the use, as set out in this Agreement;
- E. The licensee agrees that this Agreement is non-transferable and is cancelled upon the transfer of title to the Lands from the above registered Licensee.

THEREFORE in consideration of the terms of this Agreement and the sum of \$2.00 now paid by the Licensee to the Village, receipt of which is acknowledged by the Village, the parties agree as follows:

1. The Village grants to the Licensee permission to construct a wharf/dock and for that purpose to encroach upon that portion of Village highway as shown on the sketch plan attached to this Agreement as Schedule 1 (Encroachment Area), which has been approved as to form, extent, dimensions, area and location by the Village engineer acting reasonably in accordance with sound highway and

municipal engineering principles, and in accordance with the guidelines annexed hereto as Schedule B1 and B2 (Group Wharf/Docks) and Schedule C1 and C2 (Single Docks). Such approval is evidenced by the signature of the Village's engineer on Schedule 1, which signature is dated prior to the execution of the Agreement by the Mayor and Chief Administrative Officer. This Licence and the permission given herein are personal to the Licensee.

2. The Village grants to the Licensee permission to enter in, on and under the Encroachment Area to construct a wharf/dock access i.e., (stairs and landing) (hereinafter called the "Works") on the Encroachment Area.
3. The licensee agrees to retain the Encroachment Area in its original natural condition, except for; the Works identified above or other alterations made with the prior written approval of the Superintendent of Public Works.

Term:

4. This Agreement is a term of ten (10) years, commencing on, _____ and terminating on _____, unless terminated earlier under section 14 of this agreement.

Annual Fees:

5. The Licensee shall pay to the Village, in advance, the annual fee set out in the Village of Belcarra Fees and Charges Bylaw.

Maintenance and Construction:

6. The Licensee shall obtain a Building Permit for any authorized works and shall at all times and at the Licensee's own expense keep and maintain the Works in good, sound and safe condition and repair to the satisfaction of the Village, and no structural alterations shall be made to the Works other than those described in an issued Building Permit.
7. The Licensee shall use all reasonable efforts to cause a minimum of obstruction and inconvenience during any excavation or construction in the Encroachment Area, and shall place and maintain warning signs, barricades, lights or flares at or near the site of any work in progress as necessary to give reasonable warning and protection to members of the public.
8. Except as expressly authorized in writing by the Superintendent of Public Works, any work shall not interfere with any existing municipal utilities located in the highway. If the Licensee is authorized to interfere with existing municipalities, the Licensee shall reimburse the Village for any expenditures by the Village in altering such utilities.

Agreement Suspension:

9. If the Licensee violates any provisions of this Agreement, or any provision of Village bylaws, all rights granted to the Licensee under this Agreement shall immediately cease and be suspended, unless the Village otherwise decides in a written response to a formal written request by the Licensee to Council. Notwithstanding suspension of the Licensee's privileges of this Agreement, the Village shall retain the right to proceed with the enforcement of any security or

indemnity provided or provided for herein in satisfaction of any claim, loss or expense of any kind whatsoever arising under this Agreement or from the permission to encroach granted hereby.

Indemnification:

10. The Licensee, releases and forever discharges the Village from and against any and all manner of actions, causes of actions, claims, expenses, suits, demands and promises whatsoever at law or equity, whether known or unknown, which the Licensee now has or may at any time by reason of, the permission to encroach granted hereby, and the Licensee indemnifies and agrees to save harmless the Village from and against all actions, suits, claims, demands, expenses, costs and all other liability, including, a claim for loss, injury or death to persons or to property howsoever arising by negligence, other tort, or intentional act and by whomsoever brought directly or indirectly related to the existence, siting, construction, use and operation of the Works.

Insurance:

11. As security for the obligations of the Licensee, the Licensee shall, immediately upon execution of this Agreement, take out and maintain comprehensive general liability insurance, protecting the Village and the Licensee (without any rights of cross-claim or subrogation against the Village) in the amount not less than \$2,000,000.00 per occurrence, all inclusive and the insurance policy shall:
 - a) name the Village as an additional insured; and
 - b) be maintained for a period ending twelve (12) months after this Agreement is terminated.
12. The Licensee further acknowledges and agrees that the Village may at any time, in its sole discretion, increase the amount of insurance required as the Village sees fit during the term of this Agreement, which the Licensee shall proceed to obtain forthwith.
13. The Licensee must provide evidence of the insurance policy annually, and such insurance policy must contain a provision prohibiting the insurer from suspending, cancelling or accepting a surrender of such policy without thirty (30) days prior written notice to the Village.
14. The Licensee shall pay all premiums and monies necessary to maintain all policies of insurance required to be maintained by the Licensee as they become due, provided that if the Licensee defaults in payment of any premiums or sums of money, the Village may pay the same and the amount will become a debt due and owing to the Village by the Licensee. So long as any such debt exists, the Licensee's privileges pursuant to this Agreement shall be suspended, and the Licensee shall continue to be bound to perform all its obligations hereunder.

Village May Enter:

15. The Village, its servants and agents may enter into and upon the Encroachment Area or Works at any and all times, without notice at any time for any reason.

Extent of Public Rights:

16. The Licensee acknowledges and agrees that the encroachment area is a highway and that the Village has limited powers to authorize the private use of a highway. The Licensee further acknowledges and agrees that any rights granted to the Licensee in this agreement are subject to the public's right to cross over the Encroachment Area. This Agreement does not authorize the public to enter in or upon the Encroachment and the Licensee shall post one or more signs indicating that the Encroachment structure is a private property.

Termination:

17. The Village has full authority to require the removal of the permitted encroachment, at any time, to withdraw the rights it has granted herein to the Licensee by giving thirty (30) days written notice to the Licensee. The Licensee may at any time, terminate this Agreement as of a date specified by written notice to the Village. In the event of termination the Licensee shall, at his/her own expense, within a period of six (6) months from the date of providing or receiving such notice of withdrawal or within such shorter time as maybe specified by the Village Council, remove the Works and fill up any excavation made, constructed or maintained with respect to it, and otherwise restore the site to its original condition prior to the commencement of works and to the satisfaction of the Superintendent of Public Works.
18. In the event the Licensee fails to keep the Works or any covering or structure thereto in good and sufficient repair to the satisfaction of the Village, or in the event that the Licensee's privileges under this Agreement are suspended under this Agreement and such suspension continues for longer than 30 days, the Village may in writing require the Licensee to remove the Works or to fill up any excavation or to restore the site to the satisfaction of the Superintendent of Public Works, or may in its sole discretion cause such repairs to be made, including structural changes, as the Public Works Superintendent deems necessary, or may at its discretion, remove the Works or fill in the excavation as the case may be, and the Licensee shall pay the costs of all such repairs, removal or filling in, which costs shall be a debt due and owing to the Village.
19. No provision of this Agreement and no act, omission or finding of negligence, whether joint or several, against the Village in favour of the Licensee or any third party, shall operate to relieve or shall be deemed to relieve the Licensee in any manner whatsoever from any liability.

Interest in Land:

20. This Agreement grants no interest in land in the Encroachment Area to the Licensee.

Assignment:

21. This Licence is personal to the Licensee and the privileges granted to the Licensee are suspended automatically upon the Licensee ceasing to be the owner in fee simple of the Lands, provided that the Licensee shall remain bound

and obligated by Sections 6, 9, 10, 16, 17, and 18 until a new owner in fee simple of the Lands executes this License and delivers the same to the Village.

Notice:

22. Any notice under this Agreement mailed to the address of the part as set out in this Agreement shall be deemed to have been give five (5) days after the date of mailing. Alternatively, any notice under this Agreement may be delivered by hand and shall be deemed to be received upon the day of delivery.

Waiver:

23. Waiver of any default by either party shall not be deemed to be a waiver of any subsequent default.

Severance:

24. If any portion of this Agreement is held invalid by a court of competent jurisdiction, the invalid portion shall be severed and the decision that it is invalid shall not affect the validity of the remainder of this Agreement.

The parties have executed the Agreement as of the day and year first above written:

Village of Belcarra by its duly)
authorized signatories:)

_____)
Mayor)

_____)
Chief Administrative Officer)

Signed, sealed and delivered by the)
Licensee in the presence of:)

_____)
Witness)

_____)
Address)

C/S

OR

Signed, sealed and delivered by the
Licensee in the presence of:

Witness

Address

C/S

**Schedule B1 To Highway Encroachment Marine/Senkler Area
Bylaw No. 411, 2008**

Title: Group Wharf/Dock Facility Foreshore Policy

Policy Statement:

1. The Village of Belcarra recognizes that owners or occupiers of upland properties may want to make use of municipal land between Kelly and Young Avenues for the purpose of gaining access to Group Wharfage Facilities.
2. A Group Wharf/Dock Facility is one in which 4 - 6 Village residents form a Group Wharfage Association under the Societies Act, and are subject to municipal bylaws, regulations, and policies. The Village may give consent to an Association to use municipal land provided that certain conditions are satisfied.

This Policy will outline the following:

- a) the location where a Group Wharf/Dock Facility may be permitted;
- b) the procedure to be followed by an Association applying to the Village for consent to use Municipal Land; and
- c) the terms and conditions regarding the use of Municipal Land for the purpose of establishing a Group Wharfage Association.

Definitions:

3. The following definitions shall apply to this Policy:

"Foreshore Recreational Licence" means the License issued by the Vancouver Fraser Port Authority (VFPA) granting use of the foreshore under certain terms and conditions;

"Group Wharfage Association" means a group of four to six Village residents that are formed pursuant to the Societies Act for the purpose of owning and operating a Group Wharf/Dock Facility;

"Group Wharf/Dock Facility" means a wharf/dock owned and operated by a Group Wharfage Association;

"Licence Agreement" means a license of occupation issued by the VFPA to the Village of Belcarra;

"Municipal Land" means land that is owned, possessed or controlled by the Village, the use of which requires Village approval;

"Policy" means the Group Wharf/Dock Facility Foreshore Policy;

"Sub-License Agreement" means an agreement between the Village and a Group Wharfage Association in accordance with the terms and conditions of a Licence Agreement; and

"Upland Owner" means the registered owner in fee simple of the property immediately upland of the Municipal Land marked by a projection of the property's side property lines to the high water mark;

Location For Group Wharfage Association:

4. Council may consent to the use of Municipal Land for Group Wharfage Associations located between Kelly Road and Young Avenue as indicated on Schedule D to Bylaw 411, 2008.

Application Procedure:

5. All applications to use Municipal Land by Group Wharfage Associations will be considered by Council in accordance with the procedure outlined in Schedule B2 to Bylaw 411, 2008. The process does include a rezoning application.

Terms and Conditions:

6. The use of Municipal land by a Group Wharfage Association shall be subject to the terms and conditions contained in:
 - a) a Licence Agreement between the VFPA and the Village;
 - b) a Sub Licence Agreement between the Village and the Group Wharfage Association; and
 - c) a Highway Encroachment Agreement between the Village and the Group Wharfage Association, a generic copy of which is attached as Schedule A to Bylaw 411, 2008.

Right of First Refusal of Upland Owner:

7. The Upland Owner shall retain the right to have first opportunity to be a member of a Group Wharfage Association when such becomes available from time to time. Should the Upland Owner decide not to become a member of the Group Wharfage Association, then Council may still authorize use of the water immediately in front of the Upland Owner for a Group Wharf/Dock Facility.
8. In cases where Council authorizes use of a water lot immediately in front of an Upland Owner for a Group Wharf/Dock Facility and where the Upland Owner has chosen to not exercise his/her right to join the Group Wharfage Association, the Association shall be constituted whereby the present owner or subsequent owner of the upland property will have the opportunity to join the Association as a member at a later date. This means that such an Association shall only have up to 5 members without the participation of the Upland Owner.

Foreshore Recreational Licence Area:

9. The area that is subject to a Foreshore Recreational Licence shall be contained within the interior side lot line projections of the Upland Owner's property. Should the interior side yard lot lines converge, then the exterior side lot lines will be used.
10. Despite the forgoing, the width of a Foreshore Recreational Licence shall be limited to less than 15.24 meters (50 feet), unless site specific conditions warrant otherwise.

Construction Requirements:

11. All structures shall conform to:
 - a) Zoning Bylaw;
 - b) Building Bylaw;
 - c) Road and Traffic Bylaw;
 - d) Policy 147 - Minimum Safety Requirements; and
 - e) VFPA Building Guidelines for Residential Wharf Facilities, as amended.
12. A Building Permit shall be required for all buildings and structures above the high water mark.
13. All construction of buildings and structures shall be consistent above and below the high water mark.
14. A self-closing, self-latching gate, complete with appropriate signage will be required at the point of land access to a structure on the water.

Annual Review:

15. On an annual basis, the Village will:
 - a) collect fees from each Association as per the agreements;
 - b) monitor improvements for safety;
 - c) confirm Highway Encroachment Agreement requirements; and
 - d) confirm Group Wharfage Association requirements.

**Schedule B2 to Highway Encroachment Marine/Senkler Area
Bylaw No. 411, 2008
Group Wharf/Dock Facility
Application Procedures**

1. All applications for Group Wharfage Facilities shall be made to the Village of Belcarra.
2. All applications shall include the following, together with the application fees at the time of submission:
 - a) a completed Wharf/Dock Project Permit Application Form;
 - b) a Title Search of the upland property, current within 30 days of the application date;
 - c) a copy of the Association's Constitution and Bylaws as per the Societies Act;
 - d) proof of insurance and Village indemnification;
 - e) construction drawings and site plans drawn to scale; and
 - f) a letter from the immediate upland property owner indicating the involvement in the proposed Group Wharf/Dock Facility.
3. The following non-refundable fees, set in the Fees and Charges Bylaw, shall apply to an Application for a Group Wharfage Association:
 - a) Wharf/Dock Project Permit Application
 - b) Municipal Road Allowance Permit Application
 - c) Building Permit Application
 - d) Highway Encroachment Agreement Annual Fee
4. The following process will be used to consider a Group Wharfage Association Application:
 - a) Posting of Public Notice of Intent at proposed location and public comment resulting from posted Notice of Intent.
 - b) Staff reviews the proposal and prepares report to Council recommending:
 - a) the application be approved in principle and contingent upon VFPA requirements;
 - b) the application be denied; or
 - c) staff seek more information.
 - c) Council initiates the zoning bylaw amendment process (if required), including the holding of a Public Hearing.
 - d) When the zoning bylaw amendment bylaw has received three readings, the Village will write to VFPA to proceed with a Licence Agreement, and will forward a copy of the approved construction drawings.
 - e) VFPA will review the proposal and if approved will provide a copy of the Licence Agreement to the Village for execution
 - f) Staff reviews VFPA Licence Agreement and prepares report to Council recommending:
 - a) the application be approved;
 - b) the application be denied; or
 - c) staff seek more information.

- g) Council adopts the zoning bylaw amendment bylaw (if required)
- h) The Mayor and Chief Administrative Officer will sign and seal the Licence Agreement and return it to the VFPA.
- i) The Village will prepare Sub-Licence and Highway Encroachment Agreements for Council approval.
- j) The Village will forward the Sub-Licence and Highway Encroachment Agreements to the Association for execution and return to the Village.
- k) The Mayor and Chief Administrative Officer will sign and seal the Sub-Licence and Highway Encroachment Agreements.
- j) The Village will provide the Association with a copy of the executed Sub-Licence and Highway Encroachment Agreement.

**Schedule C1 To Highway Encroachment Marine/Senkler Area
Bylaw No. 411, 2008**

Title: Private Single Wharf/Dock Facility Policy

Policy Statement:

1. The Village of Belcarra recognizes that owners or occupiers of upland properties along Marine Avenue may want to make use of Municipal Land for the purpose of gaining access to a Private Single Wharf/Dock Facility.
2. It is the policy of the Vancouver Fraser Port Authority (VFPA) to require the Village's consent to proposed foreshore licences for Private Single Wharf/Dock Facilities along Marine Avenue, even where the Village's bylaws permit such facilities. The Village may give consent to use municipal land provided that certain conditions are satisfied.

This Policy will outline the following:

- a) the location where the Private Single Wharf/Dock Facility may be permitted;
- b) the procedure to be followed by a property owner applying to the Village for consent to use Municipal Land; and
- c) the terms and conditions regarding the use of Municipal Land for the purpose of establishing a Private Single Wharf/Dock facility.

Definitions:

3. The following definitions shall apply to this Policy:

"Foreshore Recreational Licence" means the Licence issued by the Vancouver Fraser Port Authority (VFPA) granting use of the foreshore under certain terms and conditions;

"Licence Agreement" means a licence of occupation issued by the VFPA to the Village of Belcarra;

"Municipal Land" means land that is owned, possessed or controlled by the Village, the use of which requires Village approval;

"Policy" means the Private Single Wharf Facility Policy;

"Private Single Wharf Facility" means a wharf owned and operated by the Upland Owner to the wharf location on Marine Avenue;

"Sub-Licence Agreement" means an agreement between the Village and an occupier of a Private Single Wharf/Dock Facility in accordance with the terms and conditions of a Licence Agreement;

"Upland Owner" means the registered owner in fee simple of the property immediately upland of the Municipal Land marked by a projection of the property's side property lines to the high water mark.

Location for A Private Single Wharf Facility:

4. Council may consent to the use of Municipal Land for a Private Single Wharf/Dock Facility located on Marine Avenue as indicated on Schedule D to Bylaw 411, 2008.

Application Procedure:

5. All applications to use Municipal Land for a Private Single Wharf/Dock Facility will be considered by Council in accordance with the procedure outlined in Schedule C2 to Bylaw 411, 2008.
6. The Village's consent to use Municipal Land for a Private Single Wharf/Dock Facility will be conditional upon the Village receiving an application from the Upland Owner of where the facility is proposed to be located.

Terms and Conditions:

7. The use of Municipal Land for a Private Single Wharf/Dock Facility shall be subject to the terms and conditions contained in:
 - a) a Licence Agreement between VFPA and the Village;
 - b) a Sub-Licence Agreement between the Village and an Upland Owner of a Private Single Wharf/Dock Facility; and
 - c) a Highway Encroachment Agreement between the Village and an Upland Owner of a Private Single Wharf/Dock Facility, a generic copy of which is attached as Schedule A to Bylaw 411, 2008.

Foreshore Recreational Licence Area:

8. The area that is subject to a Foreshore Recreational Licence shall be contained within the interior side lot line projections of the Upland Owner's property. Should the interior side yard lot lines converge, then the exterior side lot lines will be used.
9. Despite the foregoing, the width of a Foreshore Recreational Licence shall be limited to less than 15.24 meters (50 feet), unless site specific conditions warrant otherwise.

Construction Requirements:

10. All structures shall conform to:
 - a) Zoning Bylaw;
 - b) Building Bylaw;
 - c) Road and Traffic Bylaw;
 - d) Policy 147 - Minimum Safety Requirements; and
 - e) VFPA Building Guidelines for Residential Wharf Facilities, as amended.
11. A Building Permit shall be required for all buildings and structures above the high water mark.
12. All construction of buildings and structures shall be consistent above and below the high water mark.

Annual Review:

13. On an annual basis, the Village will:
- a) collect fees from the property owner as per the agreements;
 - b) confirm Highway Encroachment Agreement requirements; and
 - c) confirm Private Single Wharf/Dock Facility requirements.

Council Discretion:

14. Despite provisions of this policy, Council shall have discretion to refuse consent to a licence application, or consent to an application that does not comply with this policy, if Council believes that there are exceptional circumstances connected with the application.

**Schedule C2 to Highway Encroachment Marine / Senkler Area
Bylaw No. 411, 2008**

**Private Single Wharf/Dock Facility
Application Procedures**

1. All applications for a Private Single Wharf/Dock Facility shall be made to the Village of Belcarra.
2. The application shall include the following, together with the application fees at the time of submission:
 - a) a completed Wharf/Dock Project Permit Application Form;
 - b) a Title Search of the upland property, current within 30 days of the application date;
 - c) proof of insurance and Village indemnification; and
 - d) construction drawings and site plans drawn to scale.
3. The following non-refundable fees, set in the Fees and Charges Bylaw, shall apply to an application:
 - a) Wharf/Dock Project Permit Application Fee;
 - b) Building Permit Application Fee; and
 - c) Highway Encroachment Agreement Annual Fee.
4. The following process will be used to process an Application to Occupy Municipal Road Allowance:
 - a) Staff reviews the proposal and prepares report to Council recommending:
 - a) the application be approved in principle and contingent upon VFPA requirements; b) the application be denied; or c) staff seek more information.
 - b) Should Council approve the application, the Village will write to VFPA to proceed with a Foreshore Recreational Licence Agreement, and will forward a copy of the approved construction drawings.
 - c) VFPA will review the proposal and if approved will provide the Village with the Foreshore Recreational Licence Agreement for execution.
 - d) Staff reviews VFPA Licence Agreement and prepares report to Council recommending: a) the application be approved; b) the application be denied; or c) staff seek more information.
 - e) The Mayor and Chief Administrative Officer will sign and seal the Licence Agreement and return it to VFPA.
 - f) The Village will prepare Sub-Licence and Highway Encroachment Agreements for Council approval.
 - g) The Village will forward the Sub-Licence and Highway Encroachment Agreements to the property owner for execution and return to the Village.
 - h) The Mayor and Chief Administrative Officer will sign and seal the Sub-Licence and Highway Encroachment Agreements.
 - i) The Village will provide the property owner with a copy of the executed Sub-Licence and Highway Encroachment Agreements.

Village of Belcarra Highway Encroachment Marine/Senkler Area Bylaw No. 411, 2008

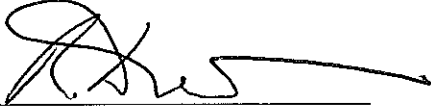
8. "Highway Encroachment Marine/Senkler Area Bylaw No. 223, 1995" and all amendments thereto, are repealed.

READ A FIRST TIME on November 17, 2008.

READ A SECOND TIME on November 17, 2008.

READ A THIRD TIME on December 1, 2008.

ADOPTED by the Council on December 8, 2008.

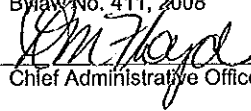


Mayor R. E. Drew



L. Floyd Chief/Administrative Officer

This is a certified a true copy of
Highway Encroachment Marine/Senkler Area
Bylaw No. 411, 2008


Chief Administrative Officer